

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IRAN HERNANDEZ, on behalf of her)	Case No. EDCV 07-0022-RC
minor son RICHARD E. HERNANDEZ,)	
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM DECISION AND ORDER
)	
MICHAEL J. ASTRUE, ¹)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

On March 23, 2007, Iran Hernandez ("Hernandez"), on behalf of her minor son Richard E. Hernandez ("Richard" or "plaintiff"), filed a complaint seeking review of the Commissioner's decision denying Richard's application for disability benefits. On August 13, 2007, the Commissioner answered the complaint, and the parties filed a joint stipulation on October 17, 2007.

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¹ Pursuant to Fed. R. Civ. P. 25(d)(1), Michael J. Astrue is substituted as the defendant in the action.

BACKGROUND**I**

On April 2, 2004 (protective filing date), Hernandez filed an application on plaintiff's behalf for disability benefits under the Supplemental Security Income ("SSI") program of Title XVI of the Social Security Act, 42 U.S.C. § 1382(a), claiming plaintiff has been disabled since March 2, 2004, due to attention deficit hyperactivity disorder ("ADHD").² A.R. 256-60, 264. The plaintiff's application was initially denied on September 13, 2004, and was again denied on January 27, 2005, following reconsideration. A.R. 235-45. The plaintiff then requested an administrative hearing, which was held on May 2, 2006, before Administrative Law Judge Jay Levine ("the ALJ"). A.R. 246-47, 527-41. On July 27, 2006, the ALJ issued a decision finding plaintiff is not disabled. A.R. 9-18. The plaintiff appealed the decision to the Appeals Council, which denied review on December 11, 2006. A.R. 4-8.

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² The plaintiff previously applied for SSI disability benefits on May 20, 1997 (protective filing date), and was awarded benefits due to congenital heart defects. A.R. 61-64, 75. However, on February 14, 2002, the Social Security Administration informed plaintiff that, as of February 2002, he no longer qualified for SSI since his health had improved and he was no longer disabled. A.R. 22-26. The plaintiff sought reconsideration of this decision, and reconsideration was denied on June 28, 2002. A.R. 27-50. Plaintiff then requested an administrative hearing, which was held before Administrative Law Judge F. Keith Varni ("ALJ Varni") on October 16, 2002. On November 4, 2002, ALJ Varni issued a decision finding plaintiff was no longer disabled as of February 1, 2002, A.R. 53-54, 223-31, and plaintiff did not appeal ALJ Varni's decision.

II

Richard, who was born on December 16, 1996, is currently 11 years old. A.R. 62, 65, 257. He attends regular educational classes, and has some supplemental special education classes. A.R. 267, 283, 292, 531, 533.

On March 12, 2004,³ Rossalyn Richardson, Ph.D., examined plaintiff at the Riverside County Department of Mental Health and diagnosed him as having combined type ADHD and determined his Global Assessment of Functioning ("GAF") was 54.⁴ A.R. 413-14. Dr. Richardson found Richard's appearance was neat, his orientation, affect and speech were within normal limits, his memory was intact, his mood was euphoric, his intelligence was average, and he had no psychotic symptoms; however, he had a short attention span, he was agitated, his judgment was limited, his insight was poor, and his thoughts were concrete. A.R. 413. Dr. Richardson noted Richard had difficulty with attention, could not sit still for any length of time, and shifted from activity to activity. A.R. 414. On April 1, 2004, Elizabeth Roberts, M.D., a psychiatrist, examined Richard, diagnosed him with Oppositional Defiant Disorder ("ODD") and ADHD, determined

³ Although Richard received extensive medical care for his congenital heart defects, see, e.g., A.R. 142-208, 323-88, 434-518, he is only challenging the ALJ's assessment of his mental impairment.

⁴ A GAF of 54 indicates "[m]oderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) or moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers)." American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, 34 (4th ed. (Text Revision) 2000).

1 his GAF was 46,⁵ and prescribed medication for Richard. A.R. 410-12.
2 Drs. Roberts and Richardson continued to treat Richard, A.R. 398-09,
3 and on July 29, 2004, Dr. Roberts found: Richard's thoughts were
4 clearly organized and concrete; his attitude was uncooperative; there
5 was evidence of aggressiveness, but no evidence of psychosis; there
6 was no history of a cognitive impairment, developmental delays or
7 abnormality, loss of developmental attainments, regression in
8 behaviors, or problems with the law; Richard was able to maintain a
9 sustained level of concentration when motivated, adapt to new and
10 stressful situations, and perform an age appropriate level of self
11 care. A.R. 406. Dr. Roberts also determined Richard could understand
12 and follow simple instructions; he was defiant and refused to obey his
13 mother; and he did not interact appropriately with others,
14 particularly his mother and his teacher. Id. Finally, Dr. Roberts
15 opined Richard's condition was expected to improve and his "behavioral
16 problems appear to be almost completely as a result of [his] mother's
17 very ineffective [and] inappropriate parenting style [and he] would
18 improve if [his] mother's parenting approach improved." Id.

19
20 On August 12, 2004, Dr. Roberts found Richard's ODD was improving
21 and he was no longer intentionally annoying his mother, who reported
22 Richard was more cooperative and less belligerent, but he still needed
23 constant supervision. A.R. 403. However, on September 16, 2004,

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25 ⁵ A GAF of 41-50 indicates "[s]erious symptoms (e.g.,
26 suicidal ideation, severe obsessional rituals, frequent
27 shoplifting) or any serious impairment in social, occupational,
28 or school functioning (e.g. no friends, unable to keep a job)." American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders, 34 (4th ed. (Text Revision) 2000).

1 Hernandez complained Richard's behavior had worsened at home, he was
2 again being defiant, oppositional and belligerent, and he was getting
3 in trouble at school; thus, Dr. Roberts increased Richard's medication
4 and advised Hernandez to continue to improve her parenting skills.

5 A.R. 401. On September 24, 2004, M.L. Valdes, M.D., examined Richard,
6 noted Richard's intelligence was average, his memory good, he was
7 oriented x3, but he was hyperactive, diagnosed Richard with ADHD,
8 determined Richard's GAF was 50, and changed Richard's medication.

9 A.R. 400, 402.

10
11 On August 25, 2004, M. Becraft, M.D., a nonexamining
12 psychiatrist, opined Richard has a severe impairment that does not
13 meet or medically or functionally equal a listed impairment in that he
14 has "no limitation" in acquiring and using information and moving
15 about and manipulating objects, and "less than marked" limitation in
16 attending and completing tasks, interacting and relating with others,
17 caring for himself, and health and physical well-being. A.R. 389-94.

18
19 On September 27, 2004, Richard's second-grade teacher noted he
20 had problems acquiring and using information in that he needed
21 additional one-on-one support to accomplish tasks and he has trouble
22 sitting still and behaving in class or at recess. A.R. 292-99. The
23 teacher found Richard could do several of the same problems at once,
24 but then needed feedback and further guidance on all tasks. A.R. 293.
25 The teacher opined Richard has: a "very serious problem" reading and
26 comprehending material, understanding and participating in class
27 discussions, providing organized oral explanations and adequate
28 descriptions, expressing ideas in written form, applying problem-

1 solving skills in class discussions, carrying out multi-step
2 instructions, completing class/homework assignments, completing work
3 accurately without careless mistakes, and working at a reasonable pace
4 and finishing on time; a "serious problem" comprehending oral
5 instructions, understanding school and content vocabulary,
6 comprehending and doing math problems, learning new material, paying
7 attention when spoken to directly, focusing long enough to finish an
8 assigned activity or task, refocusing to task when necessary, waiting
9 to take turns, changing from one activity to another without being
10 disruptive, organizing his own things or school materials, working
11 without distracting himself or others, playing cooperatively with
12 other children, seeking attention appropriately, expressing anger
13 appropriately, asking permission appropriately, following rules,
14 respecting/obeying adults in authority, using language appropriate to
15 the situation and listener, and taking turns in conversation; and an
16 "obvious problem" recalling and applying previously learned material,
17 carrying out single-step instructions, making and keeping friends,
18 relating experiences and telling stories, introducing and maintaining
19 relevant and appropriate topics of conversation, interpreting the
20 meaning of facial expressions, body language, hints, and sarcasm, and
21 using adequate vocabulary and grammar to express thoughts and ideas in
22 general everyday conversation. A.R. 293-95. However, although
23 Richard's teacher noted Richard experiences many of these problems
24 daily or hourly, the teacher indicated no behavior modification
25 strategies had been necessary other than sitting out recess. A.R.
26 294-95. Richard's teacher further noted that almost all of his speech
27 can be understood by a familiar listener when the topic of
28 conversation is known, and about 1/2 to 2/3 of his speech can be

1 understood when the topic is unknown. A.R. 296. Finally, Richard's
2 teacher also reported Richard has no problems moving about and
3 manipulating objects or caring for himself. A.R. 296-97.

4
5 On November 3, 2004, Michael Weiss, M.A., a school psychologist,
6 found Richard eligible for special education assistance since he
7 showed an inability to learn that cannot be explained by intellectual,
8 sensory, or other health factors. A.R. 416-23. Dr. Weiss also found
9 Richard was able to comprehend verbal communication and his speech was
10 fully intelligible, though his nonverbal ability was greater than his
11 verbal ability. A.R. 423. On November 3, 2005, Richard had his one-
12 year Individualized Educational Program ("IEP") review, which resulted
13 in him receiving 90 minutes of a resource specialist's assistance 4
14 times each week. A.R. 309-15. In 2006, Richard's IEP was reduced to
15 75 minutes of a resource specialist's assistance 4x each week. A.R.
16 316-22.

17
18 On January 25, 2005, nonexamining psychiatrist K. Gregg., M.D.,
19 opined Richard has a severe impairment that does not meet or medically
20 or functionally equal a listed impairment since plaintiff has "no
21 limitation" in moving about and manipulating objects and caring for
22 himself, and he has "less than marked" limitations in acquiring and
23 using information and attending and completing tasks. A.R. 519-25.

24 25 **DISCUSSION**

26 **III**

27 The Court, pursuant to 42 U.S.C. § 405(g), has the authority to
28 review the Commissioner's decision denying a claimant disability

1 benefits to determine if his findings are supported by substantial
2 evidence and whether the Commissioner used the proper legal standards
3 in reaching his decision. Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194,
4 1198 (9th Cir. 2008); Merrill v. Apfel, 224 F.3d 1083, 1084-85 (9th
5 Cir. 2000).

6
7 A minor is "disabled" within the meaning of the SSI program if he
8 "has a medically determinable physical or mental impairment, which
9 results in marked and severe functional limitations, and which can be
10 expected to result in death or which has lasted or can be expected to
11 last for a continuous period of not less than 12 months." 42 U.S.C. §
12 1382c(a)(3)(C)(i); Merrill, 224 F.3d at 1085. "The claimant bears the
13 burden of establishing a prima facie case of disability." Roberts v.
14 Shalala, 66 F.3d 179, 182 (9th Cir. 1995), cert. denied, 517 U.S. 1122
15 (1996); Smolen v. Chater, 80 F.3d 1273, 1289 (9th Cir. 1996).

16
17 The Commissioner has promulgated regulations establishing a
18 three-step sequential evaluation process for the ALJ to follow in a
19 minor's disability case. 20 C.F.R. § 416.924. In the **First Step**, the
20 ALJ must determine whether the claimant is currently engaged in
21 substantial gainful activity; if so, a finding of nondisability is
22 made and the claim is denied. 20 C.F.R. § 416.924(b). If the
23 claimant is not currently engaged in substantial gainful activity, in
24 the **Second Step**, the ALJ must determine whether the claimant has a
25 severe medically determinable impairment or combination of
26 impairments; if not, a finding of nondisability is made and the claim
27 is denied. 20 C.F.R. § 416.924(c). If the claimant has a severe
28 impairment, in the **Third Step**, the ALJ must determine whether the

1 claimant's impairment meets or medically or functionally equals an
2 impairment in the Listing of Impairments ("Listing"), 20 C.F.R. § 404,
3 Subpart P, App. 1, and if the claimant's impairment meets or equals an
4 impairment in the Listing, and meets the durational requirement,
5 disability is presumed and benefits are awarded. 20 C.F.R. §
6 416.924(d). When the claimant's impairment does not meet or equal a
7 Listing, or does not meet the durational requirement, a finding of
8 nondisability is made and the claim is denied. 20 C.F.R. §
9 416.924(d)(2).

10
11 Applying the three-step sequential evaluation process, the ALJ
12 found plaintiff has not engaged in substantial gainful activity since
13 the alleged onset date. (Step One). The ALJ then found plaintiff has
14 a severe impairment. (Step Two). Finally, the ALJ concluded
15 plaintiff does not have an impairment or combination of impairments
16 that meet or medically or functionally equal a Listing; therefore,
17 plaintiff is not disabled. (Step Three).

18 19 IV

20 The mere diagnosis of an impairment listed in 20 C.F.R. Appendix
21 1, Subpart P, is insufficient, in itself, to support a finding of
22 disability; rather, the claimant also must have the findings shown or
23 symptoms detailed in the listing of that impairment. 20 C.F.R. §
24 416.925(d); Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990); Key
25 v. Heckler, 754 F.2d 1545, 1549 (9th Cir. 1985). "To equal a listed
26 impairment, a claimant must establish symptoms, signs and laboratory
27 findings 'at least equal in severity and duration' to the
28 characteristics of a relevant listed impairment, or, if a claimant's

1 impairment is not listed, then to the listed impairment 'most like'
 2 the claimant's impairment." Tackett v. Apfel, 180 F.3d 1094, 1099
 3 (9th Cir. 1999) (citation omitted); Howard v. Barnhart, 341 F.3d 1006,
 4 1012 (9th Cir. 2003).

5
 6 Even if an impairment does not meet the requirements of, or is
 7 not medically equal to, a Listing, a minor claimant may be disabled if
 8 his impairment or combination of impairments is functionally
 9 equivalent to a Listing. 20 C.F.R. § 416.926a; Augustine v. Astrue,
 10 536 F. Supp. 2d 1147, 1151 (C.D. Cal. 2008); Smith v. Massanari, 139
 11 F. Supp. 2d 1128, 1135 (C.D. Cal. 2001). Functional equivalence is
 12 measured by assessing the claimant's ability to function in terms of
 13 the following six domains, which are "broad areas of functioning
 14 intended to capture all of what a child can or cannot do": (i)
 15 Acquiring and using information; (ii) attending and completing tasks;
 16 (iii) interacting and relating with others; (iv) moving about and
 17 manipulating objects; (v) caring for oneself; and (vi) health and
 18 physical well-being. 20 C.F.R. § 416.926a(b)(1). An impairment or
 19 combination of impairments functionally equals a Listing if it results
 20 in "marked" limitations in two domains of functioning or an "extreme"
 21 limitation in one domain. 20 C.F.R. § 416.926a(d).⁶ In evaluating a

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 23 ⁶ A limitation is "marked" if it "interferes seriously with
 24 [the claimant's] ability to independently initiate, sustain, or
 25 complete activities[,]" which "is the equivalent of the
 26 functioning [the Commissioner] would expect to find on
 27 standardized testing with scores that are at least two, but less
 28 than three, standard deviations below the mean." 20 C.F.R. §
 416.926a(e)(2)(i). A limitation is "extreme" if it "interferes
 very seriously with [the claimant's] ability to independently
 initiate, sustain, or complete activities"; however, it "does not
 necessarily mean a total lack or loss of ability to function[;]"

1 claimant's ability to function in each domain, the ALJ should answer
 2 the following questions about whether the claimant's impairments
 3 affect his functioning, and whether the claimant's "activities are
 4 typical of other children [of the same] age who do not have
 5 impairments": (1) What activities can the claimant perform? (2) what
 6 activities is the claimant unable to perform? (3) which of the
 7 claimant's activities are limited or restricted compared to other
 8 children the claimant's age who do not have impairments? (4) where
 9 does the claimant have difficulty with his activities - at home, in
 10 child care, at school, or in the community? (5) does the claimant have
 11 difficulty independently initiating, sustaining, or completing
 12 activities? and (6) what kind of help does the claimant need to do his
 13 activities, how much help is needed, and how often is the help needed?
 14 20 C.F.R. § 416.926a(b)(2)(i)-(vi).

15
 16 The ALJ found Richard does not meet or medically or functionally
 17 equal a Listing since his severe mental impairment does not impose any
 18 marked or extreme limitations. A.R. 13-18. With regard to the six
 19 functional equivalence domains, the ALJ found Richard has: no greater
 20 than a moderate limitation in acquiring and using information; no
 21 greater than a moderate limitation in attending and completing tasks;
 22 no limitation in interacting and relating with others; no limitation
 23 in moving about and manipulating objects; no limitation in the ability
 24 to care for himself; and no limitation in health and physical well-

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 27 rather, "[i]t is the equivalent of the functioning [the
 28 Commissioner] would expect to find on standardized testing with
 scores that are at least three standard deviations below the
 mean." 20 C.F.R. § 416.926a(e)(3)(i).

1 being. A.R. 14-17. Plaintiff, however, contends these findings are
2 not supported by substantial evidence because the ALJ failed to
3 properly consider the opinions of his treating mental health care
4 professionals, Drs. Roberts and Richardson.

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6 The medical opinions of treating physicians are entitled to
7 special weight because the treating physician "is employed to cure and
8 has a greater opportunity to know and observe the patient as an
9 individual." Sprague v. Bowen, 812 F.2d 1226, 1230 (9th Cir. 1987);
10 Edlund v. Massanari, 253 F.3d 1152, 1157 (9th Cir. 2001). Therefore,
11 the ALJ must provide clear and convincing reasons for rejecting the
12 uncontroverted opinion of a treating physician, Orn v. Astrue, 495
13 F.3d 625, 632 (9th Cir. 2007); Bayliss v. Barnhart, 427 F.3d 1211,
14 1216 (9th Cir. 2005), and "[e]ven if [a] treating doctor's opinion is
15 contradicted by another doctor, the ALJ may not reject this opinion
16 without providing 'specific and legitimate reasons' supported by
17 substantial evidence in the record." Reddick v. Chater, 157 F.3d 715,
18 725 (9th Cir. 1998); Orn, 495 F.3d at 632.

19
20 Here, plaintiff complains that, although the ALJ addressed the
21 opinions of Drs. Roberts and Richardson, "he did not indicate whether
22 he . . . accepted or rejected [their] findings. . . ." Jt. Stip. at
23 3:26-4:21. This complaint is without factual basis. To the contrary,
24 the ALJ specifically **relied** on the findings of Drs. Roberts and
25 Richardson - as well as other evidence in the record - in finding
26 plaintiff is not disabled. A.R. 14-18. For instance, in finding
27 Richard has no more than a moderate limitation in his abilities to
28 acquire and use information and in attending and completing tasks, the

1 ALJ relied on Dr. Richardson's mental status examination, which found
 2 Richard "neat and fully oriented with euphoric mood, normal affect,
 3 average intelligence, intact memory, short attention and
 4 concentration, agitated psychomotor activity, limited judgment, poor
 5 insight, normal speech, concrete thoughts and no psychotic symptoms."
 6 A.R. 15, 413. The ALJ also relied on Dr. Roberts's opinions, noting
 7 that Dr. Roberts "diagnosed [Richard] with [ODD] and [ADHD] with a GAF
 8 of 46, despite a normal mental status examination[,]""⁷ and started him
 9 on medication, and also stating "Dr. Roberts explained that the
 10 child's 'behavioral problems appear to be almost completely as a
 11 result of [the] mother's very ineffective and inappropriate parenting
 12 style' [and] . . . the child 'would improve if [the] mother's
 13 parenting approach improved.'" A.R. 15-16 (citation omitted), 406,
 14 410. Thus, the ALJ properly addressed, considered, and relied on the
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19 ⁷ Plaintiff also complains that the ALJ erred in
 20 characterizing his mental status examination by Dr. Roberts as
 21 normal because he was defiant and anxious. Jt. Stip. at 5:15-25.
 22 Even assuming arguendo the ALJ's characterization of the mental
 23 status examination was erroneous, such error was inconsequential
 24 and completely harmless since the clinical findings of the mental
 25 status examination by Dr. Roberts fully support the ALJ's
 26 conclusion that plaintiff is not disabled. See Tommasetti v.
 27 Astrue, __ F.3d __, 2008 WL 2762439, *2 (9th Cir. (Cal.)) ("The
 28 court will not reverse an ALJ's decision for harmless error,
 which exists when it is clear from the record that the ALJ's
 error was inconsequential to the ultimate nondisability
 determination." (citations and internal quotation marks
 omitted)); Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)
 ("A decision of the ALJ will not be reversed for errors that are
 harmless.").

1 opinions of Drs. Roberts and Richardson in determining plaintiff is
 2 not disabled.⁸ Bayliss, 427 F.3d at 1216.

3
 4 **ORDER**

5 IT IS ORDERED that: (1) plaintiff's request for relief is denied;
 6 and (2) the Commissioner's decision is affirmed, and Judgment shall be
 7 entered in favor of defendant.

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 9 DATE: August 15, 2008

/s/ ROSALYN M. CHAPMAN
 ROSALYN M. CHAPMAN
 UNITED STATES MAGISTRATE JUDGE

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 18 ⁸ The plaintiff also complains the ALJ erred in assessing
 19 Dr. Roberts's opinion because he did not specifically discuss Dr.
 20 Roberts's determination that he had a GAF of 46 when initially
 21 seen. Jt. Stip. at 4:26-6:4. While a GAF score may help the ALJ
 22 assess a claimant's level of impairment, it is not essential to a
 23 decision's accuracy, and the ALJ's failure to rely on the GAF
 24 does not constitute an improper application of the law where, as
 25 here, the ALJ specifically discussed all the medical evidence in
 26 the record, including the opinions of Drs. Richardson and
 27 Roberts, and properly relied on that evidence in determining
 28 plaintiff is not disabled. Howard v. Comm'r of Soc. Sec., 276
 F.3d 235, 241 (6th Cir. 2002); see also Lewis v. Barnhart, 460 F.
 Supp. 2d 771, 785 (S.D. Tex. 2006) (ALJ did not err in failing to
 discuss consulting examiner's GAF score since "the ALJ fully
 discussed and analyzed [the] consultative examination, along with
 all of the evidence of record.").